

IN THE MATTER OF	:	BEFORE THE
	:	HOWARD COUNTY
<b>BRANDON JONES</b>	:	BOARD OF APPEALS
	:	HEARING EXAMINER
Petitioner	:	BA Case No. 14-001V

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**DECISION AND ORDER**

On April 7, 2014, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Brandon Jones for variances to reduce two public street right-of-way (ROW) setbacks from 50 feet to 38 feet and 30.2 feet for a dwelling in the R-20 (Residential: Single Family) Zoning District, filed pursuant to Sections 108.0.D.4.a.(1)(a)(ii) and 108.0.D.4.b.(1)(a)(ii) of the Howard County Zoning Regulations (Zoning Regulations).

The Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure.

Petitioner was not represented by counsel. James Ruff and Brandon Jones testified in support of the petition. No one testified in opposition to the petition.

**FINDINGS OF FACT**

Based upon the evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The R-20 (residential: single family) subject property is located on the east side of Deer Ridge Lane, about 1,300 feet from the intersection of Deer Ridge

Lane and Montgomery Road. It is identified as Tax Map 37, Grid 12, Parcel 393 and has a street address of 6017 Deer Ridge Lane (the Property).

2. Property Description. The triangular shaped Property is situated at the end of Deer Ridge Drive and the I-95 right of way. A southerly portion of the Property was condemned for the construction of I-95. The existing dwelling on the Property sits about 30 feet from Deer Ridge Road.

3. Vicinal Properties. Adjacent properties are zoned R-20 and are each improved with a single-family detached dwelling. The lots to the northeast are part of the Timberview subdivision.

4. Variance Requests. Petitioner requests a variance from Section 108.0.D.4.a.(1)(a)(ii) to reduce the required 50-foot side setback from an arterial or collector public street ROW to 38 feet (the setback from the I-95 ROW) and also a variance from Section 108.0.D.4.b.(1)(a)(ii) to reduce the required 50-foot front setback from an "other" public street ROW to 30.2 feet (the setback from the Deer Ridge Lane ROW). Petitioner intends to demolish the existing dwelling and construct a new dwelling. The new dwelling would sit at the same distance from Deer Ridge Road as the existing structure.

### CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.0.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

**(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.**

**(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.**

**(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.**

**(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.**

Based upon the foregoing Findings of Fact, and for the reasons stated below, the Hearing Examiner finds the requested variances comply with Section 130.0.B.2.a.(1) through (4), and therefore may be granted.

The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2.(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property's triangular shape causes practical difficulties in complying with the setback requirements, in accordance with Section 130.B.2.a.(1). The reasonably sized dwelling will be used for a permitted purpose and it will not change the nature or intensity of use. The variances, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

The practical difficulty in complying strictly with the setback regulations arises from the lot's shape and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

The new dwelling will sit 30.2 feet from the Deer Ridge Lane ROW (front) setback, the same distance as the existing dwelling, and 38 feet from the I-95 ROW (side) setback. Within the intent and purpose of the regulations, then, the variances are the minimum variance necessary to afford relief, in accordance with Section 130.B.0.2.a.(4).

**ORDER**

Based upon the foregoing, it is this **18<sup>th</sup> day of April 2014**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Brandon Jones for variances to reduce two public street rights-of-way setbacks from 50 feet to 38 feet (the side setback) and 30.2 feet (the front setback) for a dwelling in the R-20 (Residential: Single Family) Zoning District is **GRANTED**.

**Provided, however, that:**

1. The variances shall apply only to the uses and structures as described in the petition submitted and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall obtain all necessary permits.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
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**Michele L. LeFaivre**

**Date Mailed:** 4/18/14

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.